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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,726	10/23/2000	Shing M. Lee	KLA1P012	2746

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EXAMINER

FERNANDEZ, KALIMAH

ART UNIT	PAPER NUMBER
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2881

DATE MAILED: 04/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/695,726

Applicant(s)

LEE, SHING M.

Examiner

Kalimah Fernandez

Art Unit

2881

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the _____ application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____


Claim(s) objected to: _____

Claim(s) rejected: 1, 2, 4, 6-9, 11-12, 14-18, 21-30, 32, 34

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's argument is not persuasive. As set forth in the office action mailed on 1-29-03 the recitation of "configured to detect...." does not constitute a positive limitation but only requires the ability to perform. Therefore, the invention as described in the recited claim 1 does not require the measurement of characteristics for two layers of sample only the ability to perform so. In regards to claims 1, 11, 25, and 30, Soezima teaches detecting X-ray at two different characteristic wavelengths (col.2, lines 50-60), while Sartore teaches how an electron beam will penetrates a sample to detect secondary particles from a top surface and bottom surface simply by changing the electron beam energy (col.2, lines 39-57 of Sartore). The obvious combination of Soezima and Sartore teaches the claimed invention, since an ordinary skilled artisan would have known by Sartore that a simple, accurate measurement of underlay surfaces could be made by adjusting the electron beam energy (see col.1, lines 40-44). Contrarily, Sartore does teach the penetration of the electron beam (E3) into the substrate layer (see fig. 2). In regards to applicant arguments considering Wallace et al, applicant cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references. The obvious combination of Soezima and Wallace et al as set forth in the office action relies upon Wallace et al to teach the surface analysis at different depths using wavelength-dispersive X-ray spectrometry. In other words, Soezima teaches two detectors while Wallace et al teaches depth analysis and ordinary skilled artisan would have obvious motivation to combine to differential analyze without causing damage .


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